

COPY

MEMORANDUM

TO: File River Park Square Section 108 Loan

FROM: Stanley M. Schwartz, Assistant City Attorney

DATE: July 13, 1998

On this date I met with City Council Members Rob Higgins, Orville Barnes and Phyllis Holmes; including staff of Bill Pupo, Pete Fortin, Jim Sloane and Roy Koegen of Perkins Coie. The point of the meeting was to discuss three issues related to the Section 108 Loan Documents.

1. Cowles Publishing Guaranty.

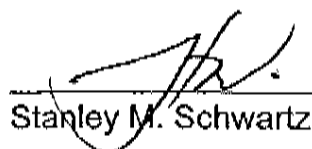
It was agreed that the City would allow a release of unused escrow funds of Cowles Publishing but would not make a repayment of such funds used in the event of a foreclosure. Therefore, the loan documents will be changed to provide that City CDBG funds will first fund the escrow account in the amount of the then existing annual allocation provided that if such funds are not used in the year of funding then in a subsequent year City funds will again be deposited which will allow a release of the Cowles Publishing funds.

2. Parking Garage Profits.

The Parking Garage Document provides that Citizens Realty can take half of the profits after revenue and expense items are paid. It was suggested that this is not appropriate given that the ownership of the Garage will be lodged in a foundation and not Citizens. Council Member Barnes stated that this profit payment is really "variable ground rent" which is warranted given the asset the City is going to receive. I was instructed to ignore this provision, especially since it is unlikely that such funds (profits) will ever be realized.

3. "Bad Boy Provision."

This provision related to the representations of the Developer with respect to the project proformas. It was indicated that lenders frequently attempt to hold the developer jointly and severely liable including those behind the corporation for any intentional misrepresentation or fraud associated with proformas. I was instructed that this provision was not to be negotiated or included.


Stanley M. Schwartz

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MEMORANDUM

TO: File

FROM: Stanley M. Schwartz, Assistant City Attorney


RE: River Park Square Parking Garage

DATE: August 25, 1998

Today, I met with Pete Fortin, Jim Sloane, and Roy Koegen for the purpose of discussing the lease between the Authority and the Foundation. Specifically, the provisions relating to variable ground rent and the repayment of City on street parking meter moneys.

1. I stated it did not make sense to me that variable ground rent would be paid to the Developer above and beyond the purchase price. This seemed to be an unnecessary payment in that the Developer is realizing its profit through the purchase price and should not be allowed to obtain any additional funds. The additional funds are not a liability of the Developer and the Developer has no right to reclaim proceeds. It was felt that this matter had already been brought before Finance and had been negotiated by Orville with concurrence of the City Council.

2. The repayment of any loan from on street parking meter moneys will come after payment of debt service, ground rent, O & M, variable ground rent (to the Developer), rate stabilization and capital improvement account. This did not seem appropriate in that debt should be paid before any profit is taken. Therefore, it is suggested that the repayment of any loan from the on street parking meter fund occur after the payment of O & M which essentially places this in a fourth priority position. This is a matter which will be taken up with Finance.



Stanley M. Schwartz

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